



# The Compliance Connection

Regulatory News for Virginia Mortgage and Consumer Finance Companies  
State Corporation Commission -- Bureau of Financial Institutions

The Compliance Connection is published quarterly and is part of the Bureau's efforts to improve communication with the companies we regulate. It is distributed to Virginia mortgage, consumer finance, industrial loan and non-profit debt-counseling agency licensees and other interested parties. It is the licensee's responsibility as a Virginia mortgage licensee to read this newsletter and to be familiar with the positions and interpretations stated herein.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau at P.O. Box 640, Richmond, Virginia 23218-0640 or via e-mail at: [nwalker@scc.state.va.us](mailto:nwalker@scc.state.va.us).

Special thanks to Mike Beane, Susan Hancock, Melissa McCollum, Jane Owen and Rob Wirt for their contributions to this issue!

## Number of Lock-in Complaints Soar!

The Bureau is experiencing a large increase in complaints, mainly involving customers who lost their locked-in interest rates. We understand that the large number of consumers entering the purchase and refinance market has drastically increased the time it takes to process and close loans; however, licensees should be able to anticipate market conditions that may affect their ability to close the loan at the locked-in terms.

The Bureau of Financial Institutions, by regulation (10 VAC 5-160-10), defines a lock-in agreement as "a written agreement between a mortgage lender and an applicant for a mortgage loan which establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified." 10 VAC 5-160-30 also requires the inclusion of the following information in the lock-in agreement: information about any adjustable rate feature of the loan (such as the index and margin); the amount of any lock-in fee and the time within which the fee must be paid; the length of the lock-in period; a statement that if the loan is not closed within the lock-in period, the lender is no longer obligated by the agreement, and the terms under which a lock-in fee will be refunded; a statement that any terms not locked in by the lock-in agreement are subject to change until the loan is closed; and any other terms and conditions of the lock-in agreement required by the lender.

(continued on page 4)

## Mortgage Q & A

Here are some of the most frequently asked questions of Bureau staff. Do you know the answers?

**Question:** Is the broker allowed to charge the applicant a fee if the applicant does not continue with the loan after the processing work is completed and a commitment from the lender is given?

**Answer:** Virginia law states that a mortgage broker is prohibited from receiving compensation (except for documented costs of a credit report and appraisal) "...until a written commitment to make a mortgage loan is given to the borrower by a mortgage lender." The Bureau construes this language in the strictest sense so potential borrowers are protected. The Bureau's position is that brokers are entitled to compensation under §6.1-422B(1) only after the borrower (not the broker) receives a commitment (in writing) from the lender to make the loan. Virginia Regulation 10 VAC 5-160-10 defines a commitment agreement as a "commitment accepted by an applicant for a mortgage loan, as evidenced by the applicant's signature thereon." A commitment is defined as a "written offer to make a mortgage loan signed by a

(continued on page 3)

### IN THIS ISSUE:

|                         |   |
|-------------------------|---|
| Lock-in Complaints      | 1 |
| Mortgage Q & A          | 1 |
| Failure to Specify Fees |   |
| Results in Refunds      | 2 |
| Right of Rescission     | 2 |
| Mortgage Orientation    | 2 |
| Household/Beneficial    |   |
| Settlement              | 3 |
| Jump\$tart Coalition    | 4 |
| License Update          | 5 |

## **Failure to Specify Fees Results in Refunds to Borrowers**

Mortgage brokers who choose to utilize the National Association of Mortgage Broker's Model Loan Origination Agreement to comply with §6.1-422B(4) of the Code of Virginia must be sure to add the specific amount of the broker fee(s) that will be collected directly from the borrower. The above-referenced Code section prohibits mortgage brokers from receiving compensation unless it is specified in a written agreement signed by the borrower. The model form does not contain a space to disclose the broker's specific charges.

Brokers who use the NAMB form without adapting the form to include the specific amount of the broker fee(s) have been cited in examination reports for violating §6.1-422B(4) of the Code of Virginia and have made refunds to affected borrowers.

Numerous violations continue to be found where mortgage broker agreements (contract for compensation) are not being entered into in accordance with §6.1-422B(4) of the Code of Virginia. In many instances a broker agreement is provided to the borrower but does not specify the fee(s) charged by the broker to the borrower. When violations of this type are cited, the Bureau requires the the broker to refund the fees collected.



## **Attention New Mortgage Licensees:**

Friday, November 14, 2003 is the date of the next orientation for new mortgage licensees. Companies that are licensed between July 1, 2003 and September 30, 2003 will receive information about the session. Orientation begins at 9:30 a.m. at our office and concludes around 3:00 p.m. Licensees who were unable to attend previous sessions should also register. Space is limited, but we will make every attempt to accommodate interested parties. Call Carol Foster at (804) 371-9701 to register!

## **Right of Rescission 101**

(This article initially appeared in the Spring 2002 issue)

The Bureau has recently received several inquiries concerning a consumer's right to rescind a mortgage transaction. Federal Regulation Z (the Truth in Lending Act) allows consumers who are refinancing the loan on their principal dwelling to change their mind and rescind the refinance transaction.

In a transaction subject to rescission, a creditor must provide two copies of the notice of the right to rescind to each consumer entitled to rescind. "Consumer" means any person who has an ownership interest in the dwelling used as security on the loan. The notice must be a separate document that identifies the transaction, and must clearly and conspicuously disclose 1) the retention or acquisition of a security interest; 2) the customer's right to rescind the transaction; 3) how to exercise the right to rescind, with a form to do so, and the creditor's address; 4) the effects of rescission; and 5) the date the rescission period expires. A model form that meets the requirements can be found in appendix H of Regulation Z.

When a consumer rescinds a transaction, any security interest giving rise to the right of rescission becomes void. In addition, the consumer cannot be required to pay any amount in the form of money or property either to the creditor or to a third party as part of the credit transaction. Any amounts of this nature already paid by the consumer must be refunded. "Any amount" includes finance charges already accrued as well as other charges such as broker fees, application and commitment fees, or fees for a title search or appraisal, whether paid to the creditor, paid directly to a third party, or passed on from the creditor to the third party.<sup>1</sup>

Contact your legal counsel with questions regarding this federal regulation.

<sup>1</sup> Official Staff Commentary on Regulation Z §226.23 (d)

## Household/Beneficial Settlement

Virginia consumers who obtained real estate secured loans from subsidiaries of Household International, Inc. between January 1, 1999 and September 30, 2002 were mailed a letter and information packet from Commissioner of Financial Institutions E.J. Face, Jr. and Attorney General Kilgore in August. These materials informed affected consumers of the minimum amount they are eligible to receive if they choose to participate in the settlement.

Consumers who have questions about the settlement payment procedures can contact the settlement administrator toll free at 1-888-780-2156 or by visiting the administrator's web site [www.household-beneficial-settlement.com](http://www.household-beneficial-settlement.com). Additional information about the settlement is also available on the SCC Bureau of Financial Institutions' web site at <http://www.state.va.us/scc/division/banking/householdsettlement>.

### **Mortgage Q & A** (continued from page 1)

mortgage lender, or by another person authorized to sign such instruments on behalf of a mortgage lender." 10 VAC 5-160-30 further specifies items that must be included in the commitment agreement such as an identification of the property, the principal amount of the loan, interest rate, term, etc.. A preapproval from a lender does not constitute a commitment agreement.

**Question:** What documents should I keep in my mortgage loan files?

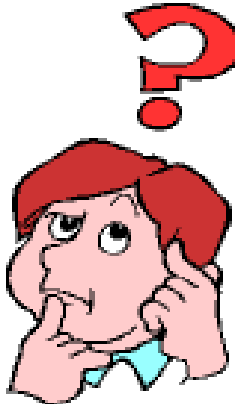
**Answer:** The short answer? Everything! Section 6.1-417 of the Code of Virginia requires any licensee under the Mortgage Lender and Broker Act to "...maintain in its licensed offices such books, accounts and records as the Commission may reasonably require in order to determine whether such lender or broker is complying with the provisions of this chapter..." The Code also refers to several specific documents that must be retained in its licensed offices as well as "...such other papers or records relating to the loan as may be required by rule or regulation." Some licensees call the Bureau to find out if they can strip their files of unnecessary documents, mainly to save storage space. The Bureau warns licensees that keeping skeleton files could cause problems down the line if the Bureau is asked to investigate allegations of fraud or a consumer complaint. If you have limited documents in your file, it may be difficult to prove that you did everything

correctly. We recommend that licensees keep all documents that relate to the loan file.

**Question:** The examiners came to do my examination, but didn't call ahead of time to make an appointment. Can they just come by unannounced?

**Answer:** Yes. Examiners are allowed to arrive to conduct an examination without first making an appointment. The Bureau's current position is that examiners should use their judgment when deciding whether to contact the company in advance of their arrival; however, examiners are given some leeway in making this decision. There are instances when

it is prudent to call ahead to ensure that the appropriate person is available to aid with the examination. Section 6.1-419 of the Code of Virginia allows the Commission's designated employees to conduct, as often as it deems necessary, an examination of the affairs, business, premises and records of any lender or broker required to be licensed under the Mortgage Lender and Broker Act. The Bureau is required to conduct an examination at least once in each three-year period. Examinations may be conducted more often, especially if the compliance history of the licensee warrants more frequent review. The owners, members, officers, directors, partners and employees of the licensee being examined must, upon demand, afford full access to all premises, books, records and information the examiner deems necessary. Refusal to permit the Commission to conduct an investigation or examination of a licensee is grounds for suspension or revocation of the license issued by the Commission (§6.1-425 of the Code of Virginia).



## **Complaints** (continued from page 1)

Several consumers have indicated to the Bureau that they learned from their lender that the broker, while having represented that the loan was locked-in, never actually locked in the promised terms with the lender. If a broker represents to the borrower that their loan is locked-in with a lender, it must be supported by documentation from the lender specifying the terms locked-in.

Another situation that the Bureau is aware of is when a broker received a lock-in confirmation from a lender and the expiration date of the lock-in listed on the confirmation was **prior** to the estimated date of closing. Based on the lock-in confirmation from the lender, the broker should have been aware up front

that the lender did not expect the loan to close within the lock-in period and at the locked-in rate; however, the broker did not notify the applicant of this until closing. Had the applicant been told up front, he/she would have had an opportunity to check into other options.

In times of heavy application volume, licensees should develop procedures and inform staff of the pitfalls of a fluctuating interest rate market. Lenders and brokers need to educate the applicants about the loan process and comply with 10 VAC 5-160-20. In particular, brokers should not misrepresent that loan terms are locked-in when the broker has not actually locked-in the rate/points with a lender.

## **Spring Meeting of Jump\$tart Coalition Held:**

The Jump\$tart Coalition for Personal Financial Literacy held its' Spring luncheon and meeting on Thursday, April 3, 2003. The meeting's purpose was to celebrate April as Financial Literacy for Youth Month and draw attention to the need for personal finance education among young adults. The event boasted record attendance and was held in the ballroom of the Washington Grand Hyatt. The keynote speaker was Federal Reserve Chairman Alan Greenspan. Many special guests were in attendance, including Ms. Judith J. Chapa, Deputy Assistant Secretary of Financial Education, U.S. Treasury and Ms. Cynthia A. Glassman, Commissioner, U.S. Securities and Exchange Commission. Commissioner of the Virginia Bureau of Financial Institutions Joe Face represented state regulators on the Jump\$tart Coalition.



Left to Right: E. J. Face, Jr., Dara Duguay, Randy Lively, Alan Greenspan, ING Direct CEO Arkad Kuhlmann, Nancy I. Brown, Don Blandin

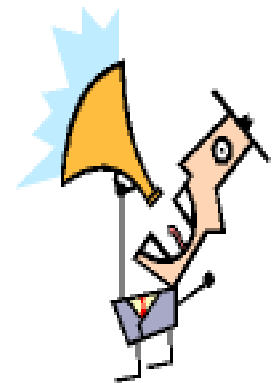


## **License Update**

The following is a list of companies that have surrendered their licenses, had their licenses revoked, had an application denied, or been fined by the Commission since May 15, 2003. This list should be helpful to keep track of companies with which you do business. These lists are accurate as of August 15, 2003. Call the Bureau if you have a question concerning a recent denial, surrender or regulatory action taken by the Commission. A list of current mortgage licensees is available on our Web site at <http://www.state.va.us/scc/division/banking/vamortgagelist.htm>

### **Mortgage License Surrenders:**

MB – 1932 Trusted Advisors Mortgage LLC – 6/1/03  
MB – 1875 Robert Musseman d/b/a Potomac Mortgage Bank – 6/5/03  
MB-1840 Financial Consulting Corporation d/b/a Loan Processing Center – 6/9/03  
MLB – 693 Business Mortgage, Inc. – 7/18/03  
MB – 799 Rayner Mortgage Company t/a Churchill Mortgage Company – 7/29/03 – NOW LICENSED AS MB – 2137 CHURCHILL MORTGAGE COMPANY  
MLB – 875 Nassau Mortgage LLC – 8/1/03  
MLB – 813 Lumina Mortgage Company, Inc. – 8/1/03  
MB – 1438 C & P Financial Consulting, Inc. d/b/a C & P Mortgage Company – 8/15/03



### **Mortgage Denials:**

MB – 2117 Grow International, Inc. – 8/13/03

### **Mortgage Revocations:**

MB – 1308 Innovation Funding, Inc. – 6/4/03 – for failure to file the annual report as required by §6.1-418 of the Code of Virginia  
MB – 1772 RLI Mortgage Services, LLC – 6/4/03 – for failure to file the annual report as required by §6.1-418 of the Code of Virginia  
MB-1452 Infinity Mortgage Company, Inc. (Boston) Used in VA by Infinity Mortgage Company, Inc. – 6/4/03 – for failure to file the annual report as required by §6.1-418 of the Code of Virginia  
MB – 1321 Olympic Mortgage Group, Inc. – 6/4/03 – for failure to file the annual report as required by §6.1-418 of the Code of Virginia  
ML – 88 Relocation Financial Services, Inc. – 8/15/03 – for failure to continuously maintain the surety bond as required by §6.1-413 of the Code of Virginia

### **Penalties Paid:**

Accent Management Group, LLC — 6/4/03 — paid a settlement of \$2,000 for failing to obtain Commission approval prior to acquiring more than 25% of the stock of Accent Mortgage Services, Inc. (MB-841), in violation of §6.1-416.1 of the Code of Virginia.  
Deidre A. Connor, — 6/4/03 -- paid a settlement of \$500 for failing to obtain Commission approval prior to acquiring more than 25% of the stock of Carnegie Financial Group d/b/a Capital Investment Group (MB-1844), in violation of §6.1-416.1 of the Code of Virginia  
Farbod Smith Zohouri — 6/20/03 — paid a settlement of \$1,000 for failing to obtain Commission approval prior to acquiring more than 25% of the stock of ZNet Financial, LLC (MLB-856), in violation of §6.1-416.1 of the Code of Virginia

## **IMPORTANT COMMISSION TELEPHONE NUMBERS**



Consumer Finance and Mortgage Examinations ....(804) 371-9701

Licensing (applications, name changes, relocations).....(804) 371-9690

Consumer Complaints.....(804) 371-9705

Banks and Savings Institutions.....(804) 371-9704

Corporate Information – Clerk’s Office.....(804) 371-9733

FAX Number for the Bureau of Financial Institutions.....(804) 371-9416



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Richmond, Virginia 23219

**IMPORTANT REGULATORY INFORMATION ENCLOSED!**